STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MARIO MERCADO, Charging Party, v. HART DISTRICT TEACHERS ASSOCIATION, Respondent.	Case No. LA-CO-801-E PERB Decision No. 1456 July 31, 2001
CANDICE BLOCH, Charging Party, v. HART DISTRICT TEACHERS ASSOCIATION, Respondent.	LA-CO-802-E

Appearances: Mario Mercado and Candice Bloch, on their own behalf; Charles R. Gustafson, Attorney, for Hart District Teachers Association.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: These cases come before the Public Employment Relations Board (PERB or Board) on appeal by Mario Mercado (Mercado) and Candice Bloch (Bloch) of a PERB administrative law judge's (ALJ) proposed decision (attached) dismissing their unfair

practice charges and complaint.[1] The complaint alleged that the Association breached its duty of fair representation when it settled grievances filed on behalf of Mercado and Bloch without notice to them and without obtaining their consent. Mercado and Bloch also complained that the Association failed to provide post-settlement information to them. Mercado and Bloch alleged that this conduct constituted a violation of sections 3544.9 and 3543.6(b) of the Educational Employment Relations Act (EERA).[2]

The Board has reviewed the entire record in this case, including the original and amended unfair practice charges, the complaint, the briefs of the parties, the ALJ's proposed decision, Mercado and Bloch's exceptions and the Association's response to the exceptions. The Board finds the ALJ's proposed decision to be free from prejudicial error and adopts it as the decision of the Board itself.

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[1]On June 15, 1999, Mercado and Bloch filed unfair practice charges against the Hart District Teachers Association (Association). On January 28, 2000, the Board's general counsel consolidated the charges and issued a complaint against the Association.

[2]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3544.9 states:

> The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit

Section 3543.6(b) states, in part:

> It shall be unlawful for an employee organization to:
>
> (b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or

ORDER

The unfair practice charges and complaint in Case No. LA-CO-801-E and Case No. LA-CO-802-E are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.

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otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

MARIO MERCADO, Charging Party, v. HART DISTRICT TEACHERS ASSOCIATION, Respondent.	)	Unfair Practice Case No. LA-CO-801
CANDICE BLOCH, Charging Party, v. HART DISTRICT TEACHERS ASSOCIATION, Respondent.	)	Unfair Practice Case No. LA-CO-802 PROPOSED DECISION (11/29/2000)

Appearances: Michael Calof, Attorney, for Mario Mercado and Candice Bloch; California Teachers Association, by Charles Gustafson, Attorney, for Hart District Teachers Association.

Before Gary M. Gallery, Administrative Law Judge.

FINDINGS OF FACT

Two counselors contend here that the exclusive representative breached its duty of fair representation when it settled their grievances without notice to them or obtaining their consent. They also complained about post-settlement failure to provide information.

These cases commenced on June 15, 1999, when Mario Mercado (Mercado) and Candice Bloch (Bloch) filed unfair practice charges against the Hart District Teachers Association (Association). After investigation, and on January 28, 2000, the general counsel of the Public Employment Relations Board (Board or PERB)

consolidated the charges and issued a complaint against the Association. The complaint alleges that Mercado and Bloch are counselors at the William S. Hart Union High School District (District). On or about July 30, 1998, Mercado and Bloch jointly filed a grievance against the District, alleging it had violated the collective bargaining agreement (CBA) by promoting two teachers into counseling positions instead of laterally transferring Mercado and Bloch. The complaint further alleged misrepresentations by Association representatives regarding selection of an arbitrator. On January 15, 1999, the Association settled the grievance with the District. On January 19, 1999, John Pletta (Pletta) informed Mercado and Bloch of the settlement. It is alleged that, contrary to its practice, the Association did not consult with Mercado or Bloch before finalizing the settlement.

The complaint further alleges that during February 1999, Mercado and Bloch sought information from Chapter Services Consultant Laura Terman (Terman) regarding Bloch's willingness to take a position at Valencia High School (Valencia) and information about the settlement. It is alleged that Terman refused to provide the information.

The complaint alleges that on March 3, 1999, Association President Orval Garrison (Garrison) denied Mercado's request to speak before the Association's Executive Council regarding the handling of the grievance. The complaint alleges that the forgoing conduct of the Association constitutes violation of its

duty of fair representation guaranteed by Educational Employment Relations Act (EERA or Act) section 3544.9,[1] in violation of section 3543.6(b).[2]

The Association filed its answer on February 22, 2000, denying any violation of the Act. A settlement conference did not resolve the dispute. Formal hearing was held on July 24 and 25, 2000, in Los Angeles, California. Post-hearing briefs were filed on September 15, 2000, and the matter submitted for decision.

FINDINGS OF FACT

Mercado and Bloch are employees within the meaning of section 3540.1(j). The Association is an exclusive representative within the meaning of section 3540.1(e) of an appropriate unit of employees, including counselors. Mercado has been a counselor within the District since 1986. Bloch has been a counselor for over six years in the District.

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[1]All references are to the Government Code unless stated otherwise. EERA is codified at section 3540 et. seq. Section 3544.9 provides:

> The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

[2]Section 3543.6 provides that it shall be unlawful for an employee organization to:

> (b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

Bob Lee is the District superintendent. Michael von Buelow (von Buelow) is the assistant superintendent of personnel for the District. Paul Priesz (Priesz) is the principal at Valencia. Pletta is grievance chair for the Association.

Section 14.4 of the operative CBA provides:

> Criteria in the following order shall be utilized to determine which unit member may receive a voluntary transfer: appropriate credential, major/minor, previous teaching experience in the subject area, and prior evaluations. When qualifications are relatively equal, needs of the District/school, length of service to the District, and length of service teaching in the subject area shall be determining factors.[3]

A transfer is defined in the CBA as:

> . . . a change from the unit member's assigned school to another school within the District and within the same job classification. Job classification, for purposes of this Article, refers to a teaching position, a counseling position, a librarian position, a psychologist position, or a school district nurse position.

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[3]The operative CBA expired June 30, 2000. Section 14.4 of the preceding CBA provided:

> Criteria for transfer, without order of preference, shall include but not be limited to: Training, major and/or minor fields, credentials, degrees, evaluations, health, co-curricular and other special competencies, experience in and outside the District, District affirmative action goals, particular educational needs of a school or department or the District, and, where practicable, advice and counsel of appropriate faculty personnel and/or departments.

Section 33.4 of the CBA provides:

> The provisions of this Agreement and rules which are designed to implement this Agreement shall be applied equitably.

The events giving rise to these combined unfair practice charges commenced in the spring of 1998, when the District posted an announcement of "Certificated Transfer Opportunity" for two counselor positions at Valencia. The announcement stated that each candidate must possess a valid pupil personnel services (PPS) credential.

Bloch applied for the transfer. A panel of District employees, including Priesz, selected Kathy Stroh (Stroh) and Kathleen Ferry (Ferry). Both had served as teachers in the District, and had just completed the PPS training.

Bloch, believing she was more qualified, filed a grievance on June 25, 1998. The Association also filed a grievance that same day. By July 9, 1998, after discussion with the Association, the District repeated the entire selection process, including posting and interviewing. Mercado applied for one of the positions at this time.

After the applicants were interviewed, Mercado and Bloch were notified by Priesz that the persons selected were the same as in the previous selection.

On July 30, 1998, Mercado and Bloch filed a joint Level 1 grievance before Priesz. Their grievance contended that the transfer provision was not followed in the selection of the two counselors, citing sections 14.4 and 33.4 of the CBA. As remedy,

the grievants requested that the counseling positions be offered to the two most qualified candidates, letters of reprimand be given to Priesz and von Buelow, and a fine of $200 be levied against the District and paid to the American Cancer Society. The District invited Garrison to review the selection process, including the criteria used. Garrison told von Buelow that, while the process and factors employed appeared to be allowable by the CBA,[4] he did not think Mercado or Bloch would accept the weight given to those factors.

The Association did not file a grievance on its own behalf.[5] Garrison told the two grievants he did not think they had a strong case.

On August 24, 1998, von Buelow wrote to both Bloch and Mercado in reply to their request for the reasons they were not transferred to Valencia. While the scores for each were slightly different, the essence is the same. Von Buelow stated in each:

> As I am able to determine, the essential reason is that you did not finish in the top two in the selection process. Seniority did not become a factor, because all qualifications were determined not to be equal.

Von Buelow then set forth six categories used by the selection committee and the ratings each grievant received. The

[4]Von Buelow testified that Garrison told him he thought there might be enough "wiggle room" for the District's reading of the transfer section.

[5]Pletta testified that the Association filed a grievance on the first selection process because there was a psychologist who had interviewed for the position in the first go-around.

categories were: interview, written response, credential, experience, evaluations, and references.

Around August 14, 1998, Garrison requested that Bloch and Mercado not contact him about the grievances. His reasoning was that, since he sat on the grievance review team, he should remain neutral while Pletta moved the grievance along.

Around August 27, 1998, Bloch sent a chronology of events to Garrison. It listed by dates, her contact with the District or the union. She noted that on August 21 she met with von Buelow for over an hour and one-half. In their discussions, von Buelow told her he would do everything in his power to help her achieve her goal of being a high school counselor. He asked her if she had any schools of preference, and she told him Hart High School (Hart), Valencia or Stevenson Ranch High School (Stevenson Ranch).[6] At some point, this same information was provided to Pletta.

Bloch, Mercado and Pletta presented the grievances to the grievance committee around the first week of October. They felt the District had clearly misapplied the terms of the CBA.

The grievance committee agreed that the dispute should go to arbitration. This recommendation was advanced, per protocol, to

[6]In her chronicle, Bloch wrote that she did not understand that von Buelow was actually offering her alternative assignments.

the executive board.[7] The executive board agreed to send the grievance to arbitration.

The District and the Association requested the services of the State Mediation and Conciliation Service on October 19, 1998. Seven days later the service sent the parties a set of arbitrators for selection.

At the same time, Garrison and Pletta were working on a resolution of the grievance, which was advanced to von Buelow on November 17, 1998. This effort to resolve the grievance was never related to Bloch or Mercado, despite numerous requests about the status of the case. On five occasions between November 30, 1998, and January 11, 1999, Mercado wrote to Pletta about the arbitration proceedings. On December 1, 1998, Pletta advised Mercado that an arbitrator had been selected. On December 18, 1998, Pletta told Mercado the union was waiting for a response.

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[7]The formal protocol is set forth in an internal union statement called "Criteria for proceeding to binding arbitration." Within the criteria is provided the following statement:

> In the event that the Executive Board votes not to take the case to arbitration, the grievant shall have the right to appeal the decision to the Executive Council, adhering to contractual timelines.

The same criteria also provides that:

> The Association recognizes that it has the right and duty fairly to represent all members in good faith. The Association also recognizes that it has the right to reject pursuing grievance to arbitration if there is a rational basis for the rejection.

On January 15, 1999, Garrison and von Buelow signed a "Resolution to Grievance" which settled the Bloch and Mercado grievances. The settlement consisted of three parts, the first of which provided that Mercado would be offered a transfer to Valencia, effective at the beginning of the 1999-2000 school year. The second provided that Bloch would be offered a transfer to the next comprehensive high school that was opened.[8] Finally, the District and the Association agreed to reopen negotiations on section 14.4 to clarify the transfer article.

Garrison testified he settled the grievance because he believed the terms were consistent with what the grievants wanted and the District did not want to be "dragged" through arbitration. He said he had to argue with the District to get them to settle. Pletta told Mercado on January 19, 1999, that the grievance had been settled.

Sometime thereafter, Terman told Bloch and Mercado that she understood the Association had conferred with Bloch and Mercado before resolving the grievance.

The findings hereafter relate to Mercado's and Bloch's efforts to obtain information from the Association. Both grievants were very upset that the grievance had been settled without their knowledge or input.

On January 27, 1999, Mercado wrote to Terman requesting information on the authority of the Association to resolve

[8]Two schools were in the planning stage, one of which was Stevenson Ranch.

grievances and information asked by Bloch regarding the arbitration process. Terman responded with some material and Mercado, on February 3, 1999, reiterated his request for material.

On January 29, 1999, Terman sent to Mercado a response to his January 27 request. Included was a copy of the grievance procedures of the CBA, the Association constitution, bylaws and the criteria for proceeding to binding arbitration. Included in this provision is the right of the executive board to seek a settlement of the grievance prior to arbitration.

Bloch met with Terman on February 3, 1999. During that meeting Terman told Bloch that she understood Bloch would not accept a counselor position at Valencia. Bloch wrote to Terman two days later. She denied she would not accept such an assignment and requested a meeting with the party who had provided the incorrect information.

On February 4, 1999, Bloch wrote to Garrison requesting information regarding the parties involved in selecting the arbitrator, documentation regarding who was selected, and documentation regarding possible dates for arbitration, dates of meetings and names of participants who approved resolution of the grievance and dates when he conferred with the grievants about the potential settlement. This was requested by e-mail the same date.

By separate letter that same day, Bloch requested from Garrison the rationale for offering Mercado the job at Valencia

(per the agreement) when she ranked higher in the grievance process and she was the original grievant.

Bloch also inquired of Pletta for documentation. Pletta replied twice to such request, on February 7, and again on February 17, 1999, suggesting her request of him and Garrison be directed to Terman.

Mercado complained to Terman on February 8, 1999, about the cancellation of a meeting with a California Teachers Association attorney following the cancellation of an earlier meeting on January 27. He expressed confusion of her role as a consultant and reiterated his request for information outlined above.

That same day Terman notified Mercado that on November 17, 1998, Pletta, Garrison and von Buelow met to select an arbitrator and that William Rule was selected.

On February 9, 1999, Bloch again wrote to Garrison expressing shock and dismay that the Association had settled the grievance without her input. She requested rationale for seeking resolution. She asked for copies of agendas and minutes of all Association meetings from June 1998 through February 1999, the same information requested earlier and association by-laws or contract language authorizing the Association to seek resolution.

On February 17, 1999, Terman sent Mercado copies of the Association agendas and minutes. Terman testified that she did not maintain the Association's operative documents in her office. Rather, she had to rely on Garrison and Pletta to generate the

responses, she as the designated person, was to provide to Bloch and Mercado.

On February 25, 1999, Bloch wrote to Garrison requesting the opportunity to meet with the party or parties who incorrectly, she asserted, provided Terman with information that Bloch would not accept a counselor position at Valencia. She wanted his assistance to clear up what she called an "untruth."

On February 25, 1999, Bloch wrote again to Terman correcting the misinformation about her willingness to take a Valencia position. She stated that she had written two letters to Garrison with no response. She had written two letters to Pletta and was directed to Terman. Bloch complained that she had written two letters to Terman and she had not responded. She again requested help.

On March 5, 1999, von Buelow offered Bloch a position in the next new comprehensive high school. He requested a reply by March 17, 1999. Bloch responded that since a new high school would not be built for several years, she felt it premature to accept the offer.

ISSUES

Did the Association breach its duty of fair representation by (1) settling the grievance, or (2) by its responses to Mercado's and Bloch's requests for information?

CONCLUSIONS OF LAW

The EERA contains a statutory expression of the duty of the exclusive representative to fairly represent each member of the unit. Section 3544.9 provides:

> The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

In Castro Valley Unified School District (1980) PERB Decision No. 149 (Castro Valley), PERB articulated its rule on the duty of fair representation in the handling of grievances. Citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124, PERB stated:

> . . . a breach of the duty of fair representation occurs when a union's conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith.
>
> Federal courts have held that, "Without any hostile motive of discrimination and in complete good faith, a union may nevertheless pursue a course of action or inaction that is so unreasonable and arbitrary as to constitute a violation of the duty of fair representation. A union may refuse to process a grievance or handle the grievance in a particular manner for a multitude of reasons, but it may not do so without reason, merely at the whim of someone exercising union authority." [Citation.]
>
> However, an employee does not have an absolute right to have a grievance taken to arbitration regardless of the provisions of the applicable collective negotiations agreement. [Citation.] An exclusive representative's reasonable refusal to proceed with arbitration is essential to the operation of a grievance and arbitration system. [Citation.]

> An exclusive representative's duty of fair representation does not contemplate
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> > . . . [t]he complete satisfaction of all who are represented . . . . A wide range of reasonableness must be allowed to a statutory bargaining representative in serving the unit it represents subject always to complete good faith and honesty of purpose in the exercise of its discretion.

The charging parties attempt to make their case for a breach of the duty of fair representation by highlighting the Association's posture on certain aspects of its case.

Initially, they find incongruous Garrison's settlement of the grievance even though Pletta and James Seely (Seely), chief negotiator for the Association, thought the grievance had merit. Both the grievance committee and the executive board thought the grievance had merit as both approved submitting the issue to arbitration. Yet, the merits of the grievance were in question before either committee passed upon the issue. Garrison, Association president, expressed his opinion, at the time the grievance was filed, that the grievance did not have much merit. Further, the union itself did not file a grievance on the issue. Finally, the executive board approved the settlement, after Garrison had secured the agreement with von Buelow. Thus, Garrison was not the only party involved in reaching and approving agreement with the District.

Charging parties question Garrison's motives by finding inconsistencies in his testimony regarding Bloch's preferences for transfer. Garrison may have related his discussion with

Bloch to a time pre-dating the filing of her second grievance. Nonetheless, she told Garrison, via the written journal presented to him on August 27, 1998, that she had earlier told von Buelow of her willingness to accept an assignment at Stevenson Ranch. Charging parties question Garrison's priorities when he testified that the Association was sensitive to the District's desire not to be dragged through arbitration. On this point I see no reflection of arbitrary behavior by Garrison. As noted below, Garrison knew both Mercado and Bloch wanted to be high school counselors. He knew both wanted to go to Valencia, but that Bloch might be willing to take an alternative location. The settlement he negotiated with the District allowed for both to occur, with Bloch taking an assignment at a new school then expected to be built.

Charging parties then assert that Garrison violated the duty of fair representation by allowing the District to unilaterally change the criteria for the transfer in violation of the contract prohibition against discrimination and the Government Code section against discrimination.

This argument is rejected. Garrison had the full backing of the executive board to settle the grievance. That settlement brought an end to the immediate dispute and salvaged the union's right to bring to the table the question of the interpretation of the transfer section. Also, the settlement gave to the grievants almost what they wanted. Mercado was to get a counselor position at Valencia. Consistent with what Bloch had expressed in August

to von Buelow, and to Garrison, she would receive a position at Stevenson Ranch. As noted, the duty of fair representation does not contemplate complete satisfaction for all represented. A wide range of reasonableness must be allowed the representative, subject to good faith and honesty of purpose. (Castro Valley.)

Charging parties allege the union's position that it got what the grievants wanted is totally inconsistent with the record in that Bloch never gave up her desire to be transferred to Valencia as one of the two counselors to be selected in the summer of 1998. Garrison's testimony is inconsistent in that he said he got that impression from conversations with Bloch, and with her writing journal, both of which preceded her filing the grievance leading to the unfair practice charge. This is a misinterpretation of the facts.

Bloch's (and Mercado's) grievance on the second selection of Stroh and Ferry was filed on July 30, 1998. Bloch's journal was sent to Garrison on August 27, 1998. The journal post-dated the filing of the grievance, and reflects a willingness by Bloch to take an assignment other than to Valencia. Indeed, it reflects her willingness to take an assignment to Stevenson Ranch.

Charging parties assert the settlement of the grievance to give Bloch a counselor position at Stevenson Ranch was illusory. Yet, at the time the settlement agreement was consummated, Stevenson Ranch (and another school) was scheduled to be built. The failure of citizens of the District to pass a necessary bond derailed the projects. This does not render the term of the

agreement to be illusory at the time it was consummated. Bloch thought the possibility of building a new school was certain enough in August 1998, to indicate a willingness to accept an assignment to that school. Garrison's belief, as well as von Buelow's, in January 1999, regarding the school, was not unjustified at that time.

Charging parties assert the union admitted its unfair practice by Garrison's concession that settlement of the grievance should have been preceded by consultation with Bloch and Mercado, and by the union's denial of an opportunity to appeal the settlement agreement decision to the executive board.

Even though Garrison did not secure permission to settle the case before reaching agreement with the District, that factor alone cannot rise to arbitrary conduct. Very clearly, Mercado and Bloch wanted to be high school counselors. Just as clearly Mercado wanted to go to Valencia and Bloch indicated a willingness to go to Stevenson Ranch. Reaching agreement with the District on behalf of Mercado and Bloch does not constitute arbitrary conduct. The agreement gave Mercado and Bloch what they wanted from the onset, to be high school counselors.

Mercado complains that he did not want to see the language of the agreement subject to negotiations again. He was instrumental in drafting the then existing language upon which his grievance was based. Yet, that language is not Mercado's. It belongs to the exclusive representative. The union obviously felt the ambiguity of the provision gave "wiggle room" to the

District, and sought to revisit the provision at the negotiations table to clarify the issue. Acknowledgment of this ambiguity was expressed by Garrison before the second grievance was filed.

In defense of this complaint, the Association examines each assertion in the pleading and finds the evidence does not support the allegation, or if it does, the consequences do not meet the arbitrary standard to find a violation.

The complaint alleges that on or about December 1, 1998, Pletta, notified Mercado and Bloch that an arbitrator had been selected for their grievance. This allegation is true. In fact, an arbitrator had been selected by the District and the Association on November 17, 1999.

The complaint alleges that on February 26, 1999, the Association, acting through its agent Charles Gustafson (Gustafson) indicated that the Association had not selected an arbitrator. This allegation has not been established by any evidence. Moreover, asserts the Association, both Mercado and Bloch knew by that time that the grievance had been settled. They were informed by Pletta on January 19, 1999. So what harm, asks the union, could either charging party have suffered on February 29 if Gustafson had told them no arbitrator had been selected?

On or about January 11, 1999, it is alleged, Mercado e-mailed Pletta and asked when they would be meeting regarding the grievance. Pletta did not respond. The complaint alleges that on or about January 14, 1999, Mercado called Pletta to see

if an arbitration date had been set. Pletta indicated that he had not heard anything. On January 15, 1999, the Association settled the grievance by signing a settlement agreement with the District. On January 19, 1999, Pletta informed Mercado and Bloch of the settlement. It is alleged that, contrary to its practice, the Association did not consult with Mercado or Bloch before finalizing the settlement.

The charging parties failed to present any evidence in support of the contention that the union's past practice was to consult with grievants prior to settling a grievance. Garrison's testimony that their consent should have been obtained does not reflect a past practice that obtaining such consent existed.

The arbitration protocol authorizes the Association to reject further arbitration pursuits if there is a rational basis for doing so. In Oakland Education Association, CTA/NEA (1984) PERB Decision No. 447, PERB noted that the union has an obligation to explain its actions in refusing to process a grievance. The question is whether the union's judgment had a rational basis, or was arbitrary or based upon invidious discrimination, not whether the judgment was correct. (Sacramento City Teachers Assn (Fanning) (1984) PERB Decision No. 428; American Federation of State, County and Municipal Employees, Local 2620 (1988) PERB Decision No. 683-S.)

In this case, Garrison's settlement of the grievance was based upon his understanding that both Mercado and Bloch wanted to be high school counselors. Both had wanted to go to Valencia,

but Bloch had expressed (to von Buelow and related to both Garrison and Pletta) a willingness to go to Stevenson Ranch, a school under plans to be constructed. The terms of the settlement agreement achieved both goals. Garrison's settlement of the grievance had a rational basis. It is not arbitrary, discriminatory, nor in bad faith.

The complaint further alleges that on or about February 3, 1999, Mercado and Bloch met with Terman to discuss the settlement. Terman indicated that she had been informed that Bloch would not accept a position at the Valencia school. Bloch denied that she had indicated she would not take a position at Valencia and asked for the name of the person who had provided that information to Terman. Terman refused to provide that information. It is alleged that on February 5, 1999, Bloch wrote Terman a letter indicating she wanted to meet with the person who provided Terman with information that she would not take a position at the Valencia school. Terman did not respond to the letter. On February 25, 1999, and March 3, 1999, Bloch reiterated her request to Terman. Terman did not respond to the letters.

The complaint further alleges that on February 8, 1999, Mercado requested the minutes and agenda of the Association's meeting from Seely. Seely indicated that Terman would provide the information, and that Garrison told Seely not to get involved with Mercado and Bloch's grievance. Terman did not provide the information.

It is alleged that on February 19, 1999, Mercado again requested the information, explaining that California Teachers Association legal counsel had indicated that there was no reason why the information should not be provided. Pletta did not respond to Mercado's request.

These allegations give rise to two essential issues. First, was Terman's refusal to tell Bloch who informed Terman that Bloch did not want to go to Valencia constitute arbitrary, capricious or discriminatory conduct? Secondly, was the union's response to Bloch and Mercado's request for information a violation of its duty of fair representation?

As to the first question, Terman's position was that there was no one else as a source of information regarding Bloch's willingness to accept an assignment at Valencia. Thus, there was no point in responding to the question raised by Bloch. Terman's belief was based upon Bloch's own assertions, which Bloch denies ever making.

Even if I were to find Terman's version less credible than Bloch's, the consequence would not affect the outcome in this case. Terman's beliefs after the settlement agreement was consummated are irrelevant to the union's duty of fair representation. She was not involved in the settlement discussions, nor in the consummation of the settlement agreement. Garrison never testified that he made the agreement with the District to settle the grievance because he thought Bloch did not want to go to Valencia. Rather, he was under the impression, as

reflected in Bloch's August 27 journal entry, that she would accept a position at Stevenson Ranch. More importantly, Terman may have been mistaken as to Bloch's desires regarding Valencia. Such mistaken belief does not rise to a arbitrary, discriminatory or bad faith treatment towards Bloch.

As to the second issue regarding providing information to Mercado and Bloch, it is very evident from the record that Bloch and Mercado were pressing all the parties for similar information. Bloch was pressing Garrison and Pletta for information that was similar to the information sought by Mercado from Terman. Under such circumstances, it does not seem arbitrary that the union's response was to try to coordinate a single response. Terman made responses to both Mercado's and Bloch's requests for information. Terman did not maintain Association records in her office. She relied on Garrison and Pletta for compiling the documents. That they were not complete to either's satisfaction does dot give rise to arbitrary conduct. Mere negligence is not a breach of the duty of fair representation. (Service Employees International Union, AFL-CIO (Scates) (Pitts) (1983) PERB Decision No. 341.)

The complaint alleges that on March 3, 1999, Garrison denied Mercado's request to speak before the Association's Executive Council regarding the handling of the grievance. There is, however, no evidence presented by charging parties to support

this allegation. Mercado made no reference to such action by Garrison.[9] Accordingly, the allegation is dismissed.

PROPOSED ORDER

Based upon the foregoing findings of fact, discussion and conclusions of law and the entire record in this matter, the complaints and unfair practice charges in Case Nos. LA-CO-801 and LA-CO-802, Mario Mercado v. Hart District Teachers Association and Candice Bloch v. Hart District Teachers Association, are hereby dismissed.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

[9]The protocol for arbitration includes the right of grievants to appeal a decision by the executive board to not proceed to arbitration. I do not see that provision overriding the right of the Association to settle the case before going to arbitration. Here, the executive board, initially approved taking the dispute to arbitration.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit.8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

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Gary M. Gallery
Administrative Law Judge